



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 10/007,812
Applicant : ROBERT S. SUPINSKI
Filed : November 8, 2001
Title : PATELLA REPLACEMENT APPARATUS
Group Art Unit : 3732
Examiner : David A. Bonderer
Docket No. : 011072

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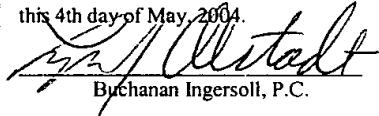
**REQUEST PURSUANT TO 37 C.F.R. §1.607 FOR DECLARATION OF
INTERFERENCE WITH U. S. PATENT NO. 6,146,423 AND
ACCOMPANYING SHOWING UNDER 37 C.F.R. §1.608(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on

this 4th day of May, 2004.


Buchanan Ingersoll, P.C.

Please consider the following request for declaration of interference submitted in accordance with 37 C.F.R. §1.607 and the prima facie showing as required under 37 C.F.R. §1.608(a).

PART I

**Request Pursuant to 37 C.F.R. §1.607 For
Declaration of Interference with U. S. Patent No. 6,146,423**

1. Identification of the Patent Pursuant to 37 C.F.R. §1.607(A)(2)

The patent claiming subject matter that interferes with the subject matter recited in the claims of the above-identified application is U. S. Patent No. 6,146,423 (the "Cohen patent"), which issued on November 14, 2000, from U.S. Patent Application Serial No. 09/239,647 filed on January 28, 1999. A copy of the Cohen patent is attached hereto as Appendix A.

2. Presentation of Proposed Counts Pursuant to 37 C.F.R. §1.607(a)(2)

Applicant proposes that applicant's claim 1 which is identical to claim 1 of the Cohen patent be Count I of the interference and that applicant's claim 15 which is identical to claim 16 of the Cohen patent be Count II of the interference.

3. Identification of Claims of the Cohen Patent Which Correspond to Proposed Counts Pursuant to 37 C.F.R. §1.607(A)(3)

The Cohen patent contains twenty four (24) claims. Cohen's claims 1 through 15 correspond to Count I. Claims 16 through 14 correspond to Count II.

4. Identification of Claims of the Application Which Correspond to Proposed Counts Pursuant to 37 C.F.R. §1.607(A)(3)

The pending application contains 26 claims. Applicant's claims 1 through 14 correspond to proposed Count I and claims 15-21 correspond to proposed Count II. Applicant's claims 22-26 do not correspond to either proposed count.

5. Application of the terms in the Newly-Added Claims

There are no newly added claims.

6. Explanation Pursuant to 37 C.F.R. §1.607(a)(6) of the Inapplicability of 35 U.S.C. §135(b)

The present application was filed on November 8, 2001 within one year of the November 14, 2000 issue date of the Cohen patent. All of the pending claims were presented in the original application. Therefore, 35 U.S.C. §135(b) and 37 C.F.R. § 1.607(a)(6) do not apply.

PART II

Prima Facie Showing Under 37 C.F.R. § 1.608(b)

Attached hereto as exhibits B and C are copies of declarations of Dr. Robert Supinski and Brian McDaniel and the drawings and other documents identified in the declarations. These declarations and exhibits establish that Dr. Supinski conceived of a patella replacement device within the pending claims in 1989 and had actual reductions to practice by May, 1990, and in January, 2001. Thus, applicant's invention date is well before the filing date of January 28, 1999, of the Cohen patent. Accordingly, there is sufficient basis upon which the applicant is entitled to a judgment relative to the patentee. 37 C.F.R. §1.608(b).

CONCLUSION

In view of the foregoing, the applicant respectfully requests that an interference be declared employing Proposed Counts I and II corresponding to applicant's claim 1 and applicant's claim 15, respectively. Applicant's claims 1 through 14 correspond to proposed Count 1 and claims 15-21 correspond to proposed Count II. The Proposed Counts provide a

suitable basis for priority determination. A proposed Form PTO-850 (Interference Initial Memorandum) is attached as Exhibit D.

Respectfully submitted,

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